In the High Court of Judicature for Rajasthan
Jaipur Bench
**
Cr. Msc. Petition No.2117/2007
Sita Ram Sharma ***Versus*** Sitaram Sharma & State

Date of Order ::: 04/12/07

Hon'ble Mr. Justice Ajay Rastogi

Mr. Vikas Gannan, for petitioner

Instant petition has been filed by accused assailing order dt.20/07/07 in Cr.Case-27/2005 whereby Addl. Chief Judl. Mag. No.2, Jaipur District dismissed application U/s 311, CrPC for summoning Nathuram so as to record his evidence – against which Cr.Rev-167/07 was preferred but dismissed by Sessions Judge Jaipur District vide order dt.18/10/07.

Petitioner was facing trial for offence U/s 138 of Negotiable Instruments Act. After statement of prosecution witnesses were record – in course of cross examination, it has been deposed by complainant that he borrow money from Nathuram who happens to be brother-in-law. Thereafter petitioner (accused) was examined U/s 313 CrPC and there is no other witness to be produced in defence and matter has ripen for hearing. At this stage, petitioner filed application summoning Nathuram as witness – reference of whom has been made in course of cross examination of complainant, so as to record his statement. But such

an application purported to have been filed U/s 311, CrPC was dismissed vide order impugned observing that burden was on the complainant to prove that offence has been committed by petitioner and he fails to produce further evidence in support whereof, that will not give any right to the accused petitioner to summon witness by filing application U/s 311 CrPC. It has also been observed that S.319, CrPC does not preclude the Court from summoning any witness if felt necessary for just decision of the case in the interest of justice. Taking note whereof, Court of revision in detailed order has concurred with the finding record by trial Court and rejected revision petition. This Court has gone through the orders impugned and does not find any infirmity which may call interference in inherent jurisdiction.

Consequently, misc. petition fails and is hereby dismissed.

(Ajay Rastogi), J.

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